

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

LEONEL E. DEL-ROSARIO RODRÍGUEZ,

Plaintiff

v.

UNITED STATES OF AMERICA,

Defendant

CIVIL 05-1502 (SEC)
(CRIMINAL 00-0687 (SEC))

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

On May 11, 2005, petitioner Leonel E. Del-Rosario Rodríguez filed a motion under 28 U.S.C. § 2255. See Docket No. 1. Petitioner's pleading was actually deposited in the prison mail system on April 12, 2005. He raises factual and sentencing issues. The United States filed an informative motion on June 10, 2005 to let the court know that petitioner's direct appeal from his conviction is still pending.

Petitioner appealed his sentence to the United States Court of Appeals for the First Circuit on February 3, 2003, first represented by the Federal Public Defender (Epifanio Morales), then by attorney Laura Maldonado, and then by attorney Marlene Aponte Cabrera. An Anders brief was filed in the appellate court and rejected. Appellate counsel was then directed to file an advocate's brief. Subsequently, petitioner was given permission to file an Anders brief. The appeal is now in danger of being dismissed for lack of prosecution. (1st Cir. No. 03-1166, entry of June 2, 2005).

As the United States informs, the 2255 motion is premature and the district court lacks jurisdiction to entertain the same because of the pending direct appeal. Furthermore, there are no extraordinary circumstances which would invite this

1 CIVIL 05-1502 (SEC) 2
2 (CRIMINAL 00-0687 (SEC))

3 court to entertain this request for collateral review while a direct appeal is pending.
4 See United States v. Díaz-Martínez, 71 F.3d 946, 953 (1st Cir. 1995); United States
5 v. Gordon, 634 F.2d 638, 639 (1st Cir. 1980) (following the 5th, 7th, 8th, 9th and D.C.
6 circuits). Petitioner cites the headnotes of United States v. Torres Maldonado, 14
7 F.3d 95, 96-97 (1st Cir. 1994) as supporting his request for relief. They are
8 irrelevant to the issues of extraordinary circumstances or contemporaneous direct
9 and collateral reviews.

10 In view of the above, I recommend that the section 2255 petition be denied
11 without evidentiary hearing.

12 Under the provisions of Rule 72, Local Rules, District of Puerto Rico, any
13 party who objects to this report and recommendation must file a written objection
14 thereto with the Clerk of this Court within ten (10) days of the party's receipt of this
15 report and recommendation. The written objections must specifically identify the
16 portion of the recommendation, or report to which objection is made and the basis
17 for such objections. Failure to comply with this rule precludes further appellate
18 review. See Thomas v. Arn, 474 U.S. 140, 155 (1985), reh'g denied, 474 U.S. 1111
19 (1986); Davet v. Maccorone, 973 F.2d 22, 30-31 (1st Cir. 1992); Paterson-Leitch v.
20 Massachusetts Elec., 840 F.2d 985 (1st Cir. 1988); Borden v. Secretary of Health &
21 Human Servs., 836 F.2d 4, 6 (1st Cir. 1987); Scott v. Schweiker, 702 F.2d 13, 14
22 (1st Cir. 1983); United States v. Vega, 678 F.2d 376, 378-79 (1st Cir. 1982); Park
23 Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603 (1st Cir. 1980).

24 At San Juan, Puerto Rico, this 20th day of June, 2005.
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26 S/ JUSTO ARENAS
27 Chief United States Magistrate Judge
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